ORDINANCE NO. 27221

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 12.12 OF TITLE 12 OF THE SAN JOSE MUNICIPAL CODE TO AMEND AND RESTATE THE CITY OF SAN JOSE MUNICIPAL LOBBYING ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Chapter 12.12 of Title 12 of the San José Municipal Code is hereby amended to be numbered, entitled and read as follows:

CHAPTER 12.12

SAN JOSE MUNICIPAL LOBBYING

Part 1

Title and Purpose

12.12.010 <u>Title and Purpose</u>

A. This Chapter shall be known as the San José Municipal Lobbying Ordinance.

B. Purpose and Goals: This Chapter is intended to achieve the following purposes and goals:

1. To guarantee to the residents of the City that the City of San Jose (City) continues the highest ethical work environment for the residents of the City and the City's elected officials and employees.

2. In the spirit of open and transparent government, to allow the public to know and better understand the relationship between its elected officials and lobbyist's clients.

3. To enhance public confidence and trust with respect to lobbyist activities and City practices.

4. To ensure that the requirements of this Chapter and their implementation are responsive to the goal of making it easy to do business with the City.

5. To bring about clarity and certainty about applicable provisions among stakeholders.

6. To establish a policy that sets clear standards of conduct.

7. To maintain the citizen's constitutional right to petition government for redress of grievances and not to limit the public's access to their elected officials.

Part 2
Definitions

12.12.100 Definitions

For purposes of this Chapter, the following definitions shall be applicable. Other terms used in this Chapter shall have the meanings set forth in the California Political Reform Act of 1974, as amended.

12.12.110 Activity Expense

"Activity Expense" means any payment made by a lobbyist to or directly benefiting any City official, City official-elect or member of such official's or official-elect's immediate family and domestic partners. Activity expenses include gifts, honoraria, consulting

fees, salaries and any other form of compensation, but do not include campaign contributions.

12.12.120 At the Behest

"At the behest" means at the specific direction of, or at the personal request or suggestion of, or with the express prior consent of, any elective City official, City official-elect or candidate for elective City office.

12.12.130 City Official

"City Official" includes the Mayor and Members of the City Council, any appointee of the City Council, Mayoral or Council staff member, Redevelopment Agency Board Member, members of the Planning Commission, Appeals Hearing Board, Civil Service Commission, any City representative to any joint powers authority to which the City is a party, the City Manager and his or her Assistant City Manager and Deputy City Managers and the Executive Director of the Agency and his or her Assistant and Deputies and City and Agency department heads.

12.12.140 City Official-Elect

"City official-elect" means a person who has been elected to a City office but has not yet been sworn in to office.

12.12.150 Client

"Client" means a person who compensates a lobbyist for representation.

12.12.160 <u>Contact</u>

"Contact" means any direct communication, whether orally, electronically or in writing, including without limitation, communication through an agent, associate or employee, for the purpose of influencing or attempting to influence legislative or administrative action.

12.12.170 <u>Compensated or Compensation</u>

"Compensated or Compensation" means any economic consideration for services rendered or to be rendered in the future, including, without limitation, promises to perform or provide services, contractual arrangements, contingency fees, success fees, bonuses or awards.

12.12.180 <u>Lobbying</u>

"Lobbying" means influencing or attempting to influence a City Official or City official-elect with regard to a legislative or administrative action of the City or Redevelopment Agency.

A. "Influencing" means the purposeful communication, either directly or through agents, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions of a City official or City official-elect, by any means, including, but not limited to, providing or using persuasion, information, incentives, statistics, studies or analyses.

B. "Legislative action" means the drafting, introduction, consideration, modification, enactment or defeat of any resolution, ordinance, amendment thereto, report, nomination or other action of the Mayor, City Council, Redevelopment Agency of

the City, or City board or commission, or task force or any joint powers authority of which the City is a party.

C. "Administrative action" means the proposal, drafting, development, consideration, advocacy, recommendation, adoption, amendment or approval of any rule, regulation, agreement or contract, permit, license or hiring action.

12.12.190 <u>Lobbyist</u>

"Lobbyist", unless exempt under Section 12.12.300 means:

A. Lobbyist (Contract). An individual who engages in lobbying on behalf of one or more clients (acting individually or through agents, associates, employees or contractors) and who has received or has entered into an agreement for compensation of one thousand dollars ($1,000) or more ("threshold compensation") for any services which includes engaging in lobbying during any consecutive three (3) month period.

B. In House Lobbyist:

1. An individual who is an officer or employee of an organization or association which has a membership and for which the officer or employee is compensated for purposes of advancing the goals or mission of the umbrella organization or association, such as a trade association, and who engages in lobbying on its behalf in an aggregate amount of 20 hours or more within any three (3) month period; or

2. An individual who is an owner of a business or employed by an business or organization and who is compensated more than one thousand dollars ($1,000) in a month beyond reimbursement for their reasonable travel,

meals or incidental expenses for engaging specifically in lobbying and whose duties as an employee include lobbying on behalf of his or her employer and who engages in lobbying on its behalf in an aggregate amount of 20 hours or more within any three (3) month period.

C. Expenditure Lobbyist. A person who makes payments or incurs expenditures of five thousand dollars ($5,000) or more during any calendar year in connection with carrying out public relations, advertising or similar activities with the intent of soliciting or urging, directly or indirectly, other persons to communicate directly with any City official in order to attempt to influence a legislative or administrative action. The five thousand dollars ($5,000) threshold shall not include:

1. Compensation paid to contract lobbyists or employees for lobbying; or

2. Dues payments, donations, or other economic consideration paid to an organization, regardless of whether the dues payments, donations or other economic consideration are used in whole or in part to lobby.

12.12.210 <u>Person</u>

"Person" means any individual, business entity, trust, corporation, association, committee, or any other organization or group of persons acting in concert.

Part 3
Exceptions

12.12.300 Exceptions

The following persons are exempt from the requirements of this Chapter:

A. A public official acting in his or her official capacity.

B. A person engaged solely in publication or broadcasting of news items, editorials, or commentary which directly or indirectly urges governmental action.

C. A person hired by the City or Agency for work performed on behalf of the City or Agency, or a person who prepares documents for approval by the City under the California Environmental Quality Act of 1970, as amended and Title 21 of the San Jose Municipal Code, or a person who has been specifically invited by the City Council or Redevelopment Agency or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the City or the Redevelopment Agency charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony in aid of the body or person extending the invitation or invited to attend a meeting such as a City or Agency task force or department committee meeting to provide information or assistance requested by City or Agency staff.

D. A person who, without additional compensation and not as part of, or in the ordinary course of his or her regular employment, appears to present the position of an employer or organization such as a taxpayers' association or trade association when that employer, association or organization has one or more of its officers, employees or representatives already registered as a lobbyist under the provisions of this Chapter.

E. A person whose attempts to influence governmental action are limited to:

1. Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public;

2. Preparing, processing or submitting documents or writings in connection with the governmental action for use at a public meeting, public hearing, or other official proceeding open to the public.

F. Any person whose sole activity includes one or more of the following:

1. to submit a bid on a competitively bid contract;

2. to submit a written response to a request for proposals or qualifications;

3. to participate in an oral interview for a request for proposals or qualifications; or,

4. to negotiate the terms of a contract or agreement with the City, once the City has authorized either by action of the City Council, City Manager, or voters, entering an agreement with that Person, whether that Person has been selected pursuant to a bid, request for proposals or qualifications, or by other means of selection recognized by law.

G. A person who meets with City Officials solely to lodge “whistleblower” complaints relating to improper governmental activity such as gross mismanagement, waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

H. A person who meets with the City Attorney or City Clerk regarding any claim or litigation matter, negotiation of any agreements where the City is a party or the requirements or interpretation of this Chapter.

I. Uncompensated members or uncompensated members of the board of directors of non-profit organizations.

J. Members of neighborhood associations, Neighborhood Advisory Committees or Project Area Committees.

K. Persons whose communications are solely related to:

1. The establishment, amendment, administration, implementation or interpretation of a collective bargaining agreement or a memorandum of agreement between the City and a recognized employee organization.

2. Management decisions as to the working conditions of represented employees that clearly relate to the terms of a collective bargaining agreement or memorandum of agreement between the City and a recognized employee organization.

3. Proceedings before the City of San Jose Civil Service Commission.

L. A person whose communications with City Officials are solely in connection with the administration of an existing contract or agreement between the person and the City or Redevelopment Agency.

Part 4
Requirements

12.12.400 <u>Registration with City Clerk</u>

A. A Lobbyist is required to register with the City Clerk no later than ten (10) days after qualifying as a lobbyist as defined in this Chapter.

B. A Lobbyist shall renew his or her registration by January 15 of each year unless status as a lobbyist has terminated.

C. After initial registration, annual registration renewal shall not be required if a declaration attesting to the termination of lobbying services within the City has been filed with the City Clerk no later than January 15.

12.12.410 <u>Required Registration Information</u>

A. The initial registration report for lobbyists shall contain the name, business address, telephone and fax numbers of all persons required to register under this Chapter, including the names of all owners of sole proprietorships and partnerships of fewer than five persons.

B. If the registrant is a corporation, it shall also include the names of the officers and agent for service of process, if any.

C. Any business or organization registering under this Chapter shall also describe the nature of its business or organization in sufficient detail to inform the reader of the nature and purpose of the business.

D. The registration report shall contain the following:

1. The name, business address, telephone number of each client, the nature of each client's business and a brief description of the item(s) of legislative or administrative action the lobbyist is seeking to influence on behalf of the client; and the name of each person employed or retained by the lobbyist to lobby on behalf of each client.

2. Lobbyist information shall also include the names of all owners, officers and employees conducting lobbying activities and a brief description of the item(s) of legislative or administrative action the lobbyist is seeking to influence.

3. Expenditure lobbyist information shall also include a brief description of the legislative or administrative action the lobbyist is seeking to influence.

4. Lobbyists who are individuals, including In House Lobbyists, shall also describe the nature of the business, organization or association which employs or compensates the lobbyist and include a brief description of the legislative or administrative action the lobbyist is seeking to influence.

12.12.420 <u>Additional Required Information and Disclosures</u>

The initial lobbyist registration shall also contain the following information:

A. Campaign and officeholder contributions to an elected City official or candidate for City Office made during the preceding calendar quarter.

B. Campaign and officeholder contributions made at the behest of an elected City official or candidate to any other elected public official or candidate for public office during the preceding calendar quarter.

C. All Independent Expenditures made for or on behalf of a City official or candidate for City office made during the preceding calendar quarter.

D. Fundraising activity for any City official, candidate for elective City office or any controlled committee of the elected City official or candidate for City office or for any political action committee, political party or candidate for elective office of a

governmental organization made at the behest of a City official during the preceding calendar quarter.

E. Donations to for profit or nonprofit organizations made at the behest of a City official or candidate for elective City office of any contribution or payment of more than one thousand dollars ($1,000) in the aggregate made during the preceding calendar quarter.

F. Payments received for services as a consultant or in any other capacity for services rendered to any City department or Redevelopment Agency, City official, or any City official-elect, their controlled committees or officeholder committees.

G. Contacts made with City officials or City officials-elect during the preceding calendar quarter for the purpose of influencing or attempting to influence legislative or administrative action. Contact information shall include a brief description of the item(s) of legislative or administrative action the lobbyist is seeking to influence and the number of contacts in the following ranges: (1), (2-5), (6-10) or (11 or more).

H. Activity expenses such as payments that directly benefits any City official, City official-elect or member of his or her immediate family or domestic partner made during the preceding calendar quarter.

12.12.430 <u>Quarterly Reports</u>

A. For each calendar quarter following the quarter in which the lobbyist was required to register, the lobbyist must file a quarterly report with the City Clerk not later than fifteen (15) calendar days after the end of the qualifying quarter on March 31, June 30, September 30 and December 31 whether or not any lobbying

activities have occurred during such period. Electronic reporting may also be permitted by the City Clerk.

B. Each quarterly report shall contain the same information as required to be disclosed in the initial registration, for those activities occurring in that quarter. If a lobbyist has terminated all lobbying activities during such quarter, the lobbyist may file a declaration of termination with the quarterly report. The final quarterly report shall include disclosure of any lobbying activities during the quarter of termination.

C. Each quarterly report for Lobbyists (Contract) shall indicate the total economic compensation promised or received from each client listed during the reporting period for lobbyist services in accordance with the following ranges: ($500 - $1,000), ($1,001 - $10,000), ($10,001 - $100,000), and (Over $100,000).

D. Quarterly reports shall be filed by April 15, July 15, October 15 and January 15 for the prior calendar quarter, and are delinquent thereafter.

E. Records pertaining to the registration and quarterly reports shall be preserved by the lobbyist for inspection and audit by the City for a period of five (5) years from the date of production.

12.12.440 <u>Registration Fees</u>

Persons subject to the registration requirements of this Chapter shall pay an annual fee as set forth in the schedule of fees, established by resolution of the City Council. Individuals within the same business entity who qualify as lobbyists under the provisions of Section 12.12.190 are each subject to this fee. Persons, or individuals within the same business entity, registering for the first time on or after June 30 of a given year shall pay a reduced registration as set forth in the schedule of fees.

A. The applicable registration fee is due at the time of registration or registration renewal. Payment will be deemed delinquent thereafter. Delinquency fees as set forth in the schedule of fees may be assessed as specified in subsection C below, if payment occurs after the due date.

B. In addition to the annual fee, each registrant shall pay a fee per client for whom lobbying is undertaken for compensation in excess of $500.00 as set forth in the schedule of fees. The fees for clients as of the date of initial registration shall be submitted with the registration. The fees for subsequent clients will be due and submitted at the time of submission of the relevant quarterly report as required in this Chapter. Lobbyists for umbrella organizations or associations such as a trade association will not be assessed a client fee based solely on compensation derived from fees paid by members based on their membership with such organization or association.

C. A fine as set forth in the schedule of fees for delinquent fees, up to a maximum of 100% of the unpaid fees, will be assessed until the registration fees and the fines are paid in full.

D. A fine for delinquent quarterly reports as set forth in the schedule of fees will be assessed until the quarterly reports are filed with the City Clerk.

Part 5
Enforcement and Prohibitions

12.12.500 Noncompliance - Order to Show Cause

A. Upon the written request of any City Official, the City Clerk shall issue an order to show cause to any unregistered person.

B. Such order shall specify a time and place where such person shall appear to provide evidence satisfactory to the Elections Commission that he or she has complied with the registration requirement or is exempt from registration.

C. If the Elections Commission determines that such person is subject to registration and he or she fails to register within seven (7) days of that determination, such person shall be barred from appearing before City Council or the Redevelopment Agency Board except at a public hearing on his or her own behalf or on oral petition. Such debarment shall be in effect for three (3) months from the date of such determination or until registration, whichever is later.

12.12.510 <u>Prohibitions</u>

It shall be unlawful for any lobbyist to commit any one of the following acts:

A. Engage in any activity on behalf of a client as a lobbyist or accept compensation as a lobbyist unless such lobbyist is registered and has filed the information required by this Chapter.

B. Doing any act with the express purpose and intent of placing any City official or immediate family member of a City official under personal or financial obligation, such as a loan or similar obligation, to such lobbyist.

C. Intentionally deceive or attempt to deceive a City official as to any material fact which is pertinent to any pending or proposed legislative or administrative action.

D. Contact any public official in the name of any non-existent person or in the name of any existing person, except with the consent of such existing person.

E. Represent, either directly or indirectly, orally or in writing that the lobbyist can control or obtain the vote or action of any City official.

F. Perform services for a client on a matter including any legislative action or administrative action for a period of one (1) year after which the lobbyist had performed services on such matter as a consultant for the City of San Jose or Redevelopment Agency.

G. Contact members of an evaluation team or panel for a City or Redevelopment Agency Request for Proposal or Request for Qualifications concerning a City or Redevelopment Agency Request for Proposal or Request for Qualifications, other than a City or Agency designated contact person, during the period of time from the release to prospective proposers of the Request for Proposal or Request for Qualification until a recommendation is made public by the City or Agency.

12.12.520 <u>Lobbyist Recommendation Prohibition</u>

City Officials are prohibited from suggesting, advising or recommending that a person obtain the services of a lobbyist or recommend the name of a particular lobbyist to facilitate favorable legislative or administrative action by the City or Redevelopment Agency with regard to such person's matter pending before the City or Redevelopment Agency.

12.12.530 <u>Compliance and Training</u>

A. The City Clerk shall oversee compliance with this Chapter, including the creation of all forms and explanatory materials.

B. A training workshop shall be established for elected City officers and lobbyists on City ethics ordinances and a code of ethics for lobbyists. The City Clerk shall establish a program of required attendance on a regular basis not less than once every three (3) years. Training workshops shall be provided to newly elected City officials.

12.12.540 <u>Enforcement</u>

A. The City Attorney may investigate complaints of violations of this Chapter. The City Attorney may seek judicial or injunctive relief in the courts to enjoin violations of or to compel compliance with the provisions of this Chapter.

B. Any person may file a complaint with the City Clerk alleging a violation of this Chapter with the Elections Commission.

C. The City Attorney or the City Clerk may put lobbyists on notice of a potential violation of the requirements of this Chapter, whether or not a complaint is filed with the Elections Commission.

12.12.550 <u>Penalties</u>

In addition to the fines which may be assessed pursuant to Section 12.12.440, violations of this Chapter may result in civil penalties of up to five thousand dollars ($5,000) for each violation or the amount of the compensation received for the lobbying activity, whichever is greater may be assessed by the Elections Commission or a court of law.

PASSED FOR PUBLICATION of title this 10th day of August, 2004, by the following vote:

AYES:	CAMPOS, CHAVEZ, CHIRCO, CORTESE, DANDO, GREGORY, LeZOTTE, REED, WILLIAMS, YEAGER; GONZALES
NOES:	NONE
ABSENT:	NONE
DISQUALIFIED:	NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, CMC
City Clerk

CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
801 North First Street, Room 116
San José, California 95110
Telephone (408) 277-4424
FAX (408) 277-3285

CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Lee Price, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that ***"Ordinance No. 27221",*** the original copy of which is attached hereto, was passed for publication of title on the ***10th day of August, 2004,*** was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the ***24th day of August, 2004,*** by the following vote:

AYES:	CAMPOS, CHAVEZ, CHIRCO, CORTESE, DANDO, GREGORY, LeZOTTE, REED, WILLIAMS, YEAGER; GONZALES
NOES:	NONE
ABSENT:	NONE
DISQUALIFIED:	NONE
VACANT:	NONE

Said ordinance is effective as of ***September 24, 2004.***

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this ***26th day of August, 2004.***

(SEAL)

LEE PRICE, CMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

08/26/04csd